

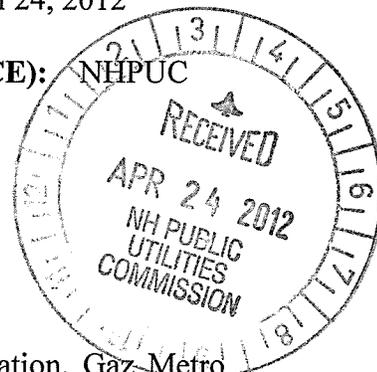
STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: April 24, 2012

AT (OFFICE): NHPUC

FROM: Thomas C. Frantz *TF*
Director, Electric Division
Alexander F. Speidel *ASD*
Staff Attorney



SUBJECT: DE 11-201
Petition of Central Vermont Public Service Corporation, Gaz Metro Limited Partnership, Green Mountain Power Corporation, Northern New England Energy Corporation, and Vermont Low-Income Trust For Electricity, Inc. for Approval of Stock Acquisition, Transfer of Franchise, and Commencement of Business as a Public Utility

TO: Commissioners
Debra Howland, Executive Director

On September 9, 2011, Central Vermont Public Service Corporation (CVPS), of Rutland, Vermont, Gaz Metro Limited Partnership (Gaz Metro), of Montreal, Quebec, Canada, Green Mountain Power Corporation (GMPC), of Colchester, Vermont, Northern New England Energy Corporation (NNEEC), of South Burlington, Vermont, and Vermont Low-Income Trust for Electricity, Inc. (VLITE), of Colchester, Vermont (collectively, "Petitioners"), filed a petition for the Commission's approval of a multi-step corporate acquisition and reorganization transaction. Pending consideration of the transaction by the Vermont Public Service Board, and Staff discovery, the Petitioners agreed to a stay in the proceedings before this Commission via a letter filed on November 1, 2011, which was acknowledged by a secretarial letter dated November 7, 2011.

In light of the proceedings before the Vermont Service Board having neared their conclusion, Staff now files this recommendation for approval of the Petitioners' filing by means of an Order *Nisi*. A summary of the transaction, and the legal issues involved, follows.

Description of the Proposed Transaction

Through the proposed transaction, Gaz Metro¹ intends, through its subsidiaries, to (1) acquire CVPS and its affiliates, and (2) merge CVPS with Gaz Metro's subsidiary,

¹ Approximately 70.99% of the partnership interests of Gaz Metro are owned by GMi, a Quebec corporation that is the general partner of Gaz Metro and that owns an additional, approximately 0.01% interest indirectly through GMi's ownership of Gaz Metro Plus inc., also a Quebec corporation. The

GMPC. NNEEC is a wholly-owned subsidiary of Gaz Metro. In the first step of the transaction, a wholly-owned merger subsidiary of NNEEC, Danaus Vermont Corp., will merge with CVPS, with CVPS as the surviving corporation. This will make CVPS the direct wholly-owned subsidiary of NNEEC, and the indirect wholly-owned subsidiary of Gaz Metro. Following this acquisition, CVPS will merge into GMPC, with GMPC as the surviving corporate entity.

The primary corporate impact of this proposal on New Hampshire utility assets (discussed below) is through the resulting change in ownership of CVPS itself, and of two affiliates of CVPS and GMPC, Vermont Electric Power Company, Inc. (VELCO), of Rutland, Vermont, and Vermont Transco LLC (VTransco), also of Rutland, Vermont. CVPS, VTransco, and VELCO currently operate and own certain limited transmission and sub-transmission assets in New Hampshire and thereby form a legal nexus for Commission review of the proposed transaction (as discussed below). VELCO manages all of the electrical transmission facilities operating at 115 kV and above in Vermont. CVPS currently owns 47.05% of VELCO's common equity and 31.45% of VELCO's preferred stock. GMPC currently owns 29.18% of VELCO's common equity and 25.10% of VELCO's preferred stock. VTransco has ownership of the transmission facilities managed by VELCO, including those in New Hampshire. CVPS owns 37.85% of the direct ownership interests in VTransco; GMPC owns 29.55% of the direct ownership interests in VTransco. VELCO holds 23.34% of the direct ownership interests in VTransco, which grants CVPS and GMPC additional, indirect ownership interests in VTransco.

The net effect of the proposed transaction would be to consolidate these ownership interests in VELCO and VTransco in the hands of Gaz Metro, NNEEC, and GMPC. However, as part of this transaction, Petitioners propose that a new entity, VLITE, acquire approximately 33% of the common equity of VELCO through conveyance from CVPS and GMPC at nominal cost. This ownership interest would give VLITE the right to dividend distributions when approved by the VELCO board of directors, thereby providing VLITE with a source of reliable funding for low-income access programs in Vermont. Through discovery, the Petitioners have confirmed that VLITE will not have managerial control over VELCO, nor will VLITE have decisional control over the management of VTransco's New Hampshire assets managed by VELCO.

New Hampshire Assets of the Petitioners

Through discovery, Staff has confirmed that the Petitioners' New Hampshire utility assets are limited to certain transmission-related assets owned by CVPS, or owned by VTransco and managed by VELCO. Specifically, VTransco owns, and VELCO

remaining approximately 20% of the partnership interests of Gaz Metro are owned by Valener Inc., a publicly-held Canadian corporation. Noverco Inc. (Noverco), a Quebec corporation, owned GMi. The Caisse de depot et placement du Quebec (the Quebec provincial pension fund manager) owns Capital du Amerique CDPQ Inc., a Quebec corporation that is the sole general partner of Trencap L.P., a Quebec limited partnership, which owns 61.11% of the voting securities of Noverco, and Enbridge Inc., a Canadian corporation, owned the remaining 38.89% of the voting securities of Noverco through its wholly-owned subsidiary, IPL System, Inc.

manages: (1) a 2.32-mile New Hampshire segment of a 230 kV transmission line in Monroe; (2) a 0.88 mile New Hampshire segment of a 115 kV transmission line in Littleton, (3) an easement and microwave reflector structure in Hinsdale; and (4) a 1.1 mile New Hampshire segment of a 115 kV transmission line in Claremont. CVPS owns approximately 23 miles of sub-transmission lines and poles in Cheshire, Sullivan, and Grafton counties, through which CVPS transmits power sold by other generators to Commission-regulated electric utilities. Pursuant to Order No. 24,628 (June 1, 2006), the Commission certified that VELCO, by its ownership of its New Hampshire assets, was within the ambit of the definition of “public utility” pursuant to RSA 362:2. The Commission exercised its approval jurisdiction under RSA 374:30 to review, and approve, the transfer of these New Hampshire assets to VTransco.

Relevant Statutory Provisions; Staff Analysis

On the basis of Order No. 24,628, VTransco, the owner of the New Hampshire transmission assets, is considered to be a “public utility” pursuant to RSA 362:2, as conceded by the Petitioners. *See* Petition of CVPS, et. al., at 6. Petitioners also concede that VELCO, as manager of these assets, is also a “public utility” pursuant to RSA 362:2. *Id.* Therefore, the transfer in ownership of VTransco and VELCO resulting from the Petitioners’ proposed transaction triggers the applicability of RSA 374:30, as conceded by the Petitioners. Petition at 7. The Commission may issue an Order granting the transfer of the New Hampshire utility assets owned and managed by VTransco and VELCO, respectively, if it finds such transfer to be in the public good. Likewise, though CVPS is not directly regulated by the Commission, CVPS should be considered to be a “public utility” pursuant to RSA 362:2, by virtue of its ownership of its New Hampshire sub-transmission assets, thereby requiring Commission approval under RSA 374:30 for the transfer of its sub-transmission assets in New Hampshire to GMPC (directly) or NNEEC and Gaz Metro (indirectly).

The transfers in stock ownership of VTransco and VELCO occurring as part of the proposed transaction also implicate RSA 374:33, governing acquisition of stocks in public utilities at ownership levels above 10 percent, as VTransco and VELCO are public utilities doing business in New Hampshire. The Commission may grant an Order approving the transfer of VTransco and VELCO stock to GPMC and VLITE directly and NNEEC and Gaz Metro indirectly, if it finds that such acquisition by GMPC, VLITE, NNEEC, and Gaz Metro are lawful, proper, and in the public interest. Likewise, the transfer of stock ownership in CVPS to GPMC (directly), or NNEEC and Gaz Metro (indirectly) would require Commission approval pursuant to RSA 374:33.

Furthermore, though GMPC, NNEEC, and Gaz Metro are already involved in the operations of VTransco and VELCO through their ownership interests, their new involvement in the operation of the New Hampshire sub-transmission assets of CVPS likely implicates the operation of RSA 374:22, requiring Commission approval for the commencement of public utility business within this State. RSA 374:22 would also likely apply to the acquisition of an interest in the public utility VELCO by VLITE.

Recommendation for Approval

Staff has reviewed the petition, related filings before the Vermont Public Service Board, and the Petitioners' discovery responses, and has concluded that the proposed transaction will have no adverse effect on the New Hampshire transmission and sub-transmission assets referenced above, or against the public interest or public good generally. Staff notes that Gaz Metro and its affiliates have a proven track record of utility management in New England through the NNEEC and GMPC subsidiaries, and that VLITE will not exercise managerial control over the New Hampshire transmission assets of VTransco-VELCO.

Staff thereby recommends Commission approval, by Order *Nisi*, of (1) the transfer of ownership of CVPS', VTransco's, and VELCO's New Hampshire transmission assets pursuant to RSA 374:30 resulting from the proposed transaction; (2) the direct and indirect acquisition of the stock of CVPS by GMPC, NNEEC and Gaz Metro, and that of VTransco and VELCO by GMPC, NNEEC, Gaz Metro, and VLITE, pursuant to RSA 374:33; and (3) the commencement of business by GMPC, NNEEC, and Gaz Metro with respect to CVPS' New Hampshire sub-transmission assets, and VLITE with respect to VELCO's New Hampshire transmission assets, pursuant to RSA 374:22.

Staff additionally recommends that the Commission require, as a condition of its approval by Order *Nisi*, that the Petitioners maintain their New Hampshire transmission and sub-transmission assets to the same standards applied to the Petitioners' Vermont operations, and to the standards required for safe and adequate service generally.